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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

NOV 28 2001

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of

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 )  
 Amendment of Section 73.622(b)  
 Table of Allotments,  
 Digital Television Broadcast Stations  
 (Tyler, Texas)

)  
 )  
 MM Docket No. 01-244 /  
 RM-10234

To: Chief, Allocations Branch  
 Policy and Rules Division  
 Mass Media Bureau

**REPLY COMMENTS OF CIVIC LICENSE HOLDING CO., INC.**

Civic License Holding Company, Inc. ("Civic"), licensee of KLTV(TV) (Tyler, Texas), by its attorneys and pursuant to the Commission's *Notice of Proposed Rulemaking* ("Notice") in the above-captioned proceeding, hereby respectfully submits these reply comments regarding Civic's proposal to amend Section 73.622(b), the DTV Table of Allotments, by substituting Channel 10 as the station's paired DTV allocation for the transition period in lieu of Channel 38, as originally allotted.

Civic hereby reiterates its interest in implementing the KLTV-DT channel change. Once the Commission issues a Report and Order granting the channel change and completes processing of the DTV construction permit, along with any associated filings as may be necessary, Civic intends to complete construction of KLTV-DT as quickly as possible and place the station into operation within 6-9 months. Civic understands that the establishment of Class A service has impacted and delayed the processing of DTV filings; however, although it is unlikely that Civic now can construct KLTV-DT prior to the May 2002 deadline, Civic stands ready to expedite equipment orders and installation crew schedules to place the station into operation as

soon as possible. Civic respectfully requests that the Commission accord this proceeding similar expediency.

As explained in its Comments, Civic is seeking to change KLTV-DT's allotted channel to resolve certain technical issues, achieve specified operating efficiencies, and expedite digital television service. Station KLTV(TV), operating in the 108th ranked DMA, also hopes to minimize the special burdens placed on small-market television stations that are attempting to comply with the DTV construction requirements.<sup>1</sup> By substituting Channel 10 for KLTV-DT, the station can operate with a single, dual-channel antenna and transmission line, which will allow Civic to use the existing transmission tower and hasten the commencement of DTV service. Proposed operation of KLTV-DT on Channel 10 complies with the Commission's rules and will not impermissibly impact any full power or Class A television station. Grant of the KLTV-DT channel change, however, will displace low power and secondary station KLGW-LP (Longview, Texas), licensed to International Broadcasting Network ("IBN"). Because they are secondary to full power stations, many low power stations have been displaced by the Commission's implementation of digital television. KLGW-LP would not be prejudiced by the channel substitution, however, because it can preserve its low power station operations by relocating to Channel 36. Accordingly, the KLTV-DT channel change will serve the public interest by hastening DTV service and preserving KLGW-LP's programming.

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<sup>1</sup> As evidence of its recognition of the burdens on small-market stations, the Commission, in a separate Order released this month, announced it will grant extensions to the construction deadlines for stations experiencing financial hardship. Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, *Memorandum Opinion and Order on Reconsideration*, MM Docket No. 00-39, FCC 01-330, ¶ 46 (rel. Nov. 15, 2001).

**I. IBN'S REFUSAL TO RELOCATE KLGV-LP TO CHANNEL 36 AND PRESERVE THE STATION'S PROGRAMMING MUST NOT PREVENT THE KLTV-DT CHANNEL CHANGE.**

IBN and another party filed comments in this proceeding purportedly in opposition to the proposed KLTV-DT channel change, but no issues are raised that are relevant to this proceeding. The sole concern of Media Services Group of East Texas is that the programming of KLGV-LP should be preserved.<sup>2</sup> Civic in fact has attempted for some time to accommodate KLGV-LP's relocation to an alternative channel. In this manner, KLGV-LP could continue serving the Longview community consistent with the wishes of these commenters. It is apparent that Media Services Group of East Texas has acted under the erroneous belief that the KLTV-DT channel change would force KLGV-LP to terminate service. As Civic explained in its Comments, KLGV-LP's programming can be preserved on Channel 36.

IBN also opposes the KLTV-DT channel change because of the displacement of KLGV-LP. Unlike the other commenters, however, IBN apparently wants to preserve KLGV-LP's programming only if the station can continue operations on Channel 10. As noted in its comments, Civic has attempted for some time to facilitate the relocation of KLGV-LP to an alternative channel, but from an early stage IBN has refused to consider relocation, despite its having accepted a secondary license. Because of the priority the Commission accords to DTV channel changes for full power stations, IBN's refusal to preserve KLGV-LP's programming and relocate to Channel 36 will not prevent the KLTV-DT channel change.<sup>3</sup>

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<sup>2</sup> See Comments of Media Services Group of East Texas at 2 ("The facts are obvious that with the loss of KLGV to the community, many services and programs the public has depended on would cease to exist.").

<sup>3</sup> 47 C.F.R. § 74.702(b).

Without any legal argument, IBN in its comments is reduced to opposing the KLTV-DT channel change on the grounds that the displacement of KLGTV-LP would be a “huge loss to the viewers.”<sup>4</sup> The simple fact, however, is that KLGTV-LP’s programming service can be preserved if IBN is willing to relocate the secondary station to Channel 36. Civic continues to extend its offer to help facilitate this relocation, but it would be contrary to the purposes of the proposed channel change to allow IBN to delay this proceeding in any regard by continuing to undermine the relocation efforts.

IBN supports its opposition to the KLTV-DT channel change by citing some six thousand signatures to a petition it is circulating in the community.<sup>5</sup> Petition signatures have no relevance here. Moreover, the IBN petitions do not even provide any reliable gauge of public sentiment given that there is no indication that IBN ever informed signatories that KLGTV-LP can relocate to another channel. Civic believes that the Commission should not be in the practice of giving credence to such methods. The Commission, of course, governs DTV channel changes by rule,<sup>6</sup> not plebiscites, so the actual applicability of IBN’s manufactured opposition is dubious.

IBN offers no reasonable opposition to the KLTV-DT channel change. IBN can relocate KLGTV-LP to Channel 36 and preserve the station’s programming if it wishes, but the Commission should not reward IBN’s refusal to relocate by delaying this proceeding or declining to grant the KLTV-DT channel change – especially when IBN has affirmatively accepted secondary status in agreeing to operate KLGTV-LP. Accordingly, Civic urges the Commission to apply its rules of priority and allot Channel 10 to KLTV-DT.

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<sup>4</sup> IBN Comments at 5.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> 47 C.F.R. § 74.702(b).

## **II. IBN'S SPECULATIVE ALLEGATIONS ABOUT OWNERSHIP ARE IRRELEVANT.**

In its comments, IBN attempts to attack the KLTV-DT channel change collaterally by raising groundless speculations about supposed infirmities in KLTV(TV)'s ownership structure. IBN itself acknowledges that it has no evidence of any actual problem; rather, IBN asks the Commission to inquire if it can find one.<sup>7</sup> It is inconsistent with the Commission's expectations of a licensee for IBN to make such grave allegations without conducting proportional diligence or offering more than the insubstantial "evidence" presented. As explained below, a routine inspection of the publicly-available FCC ownership report for Civic would have answered IBN's ownership questions, which, for the most part, are fully explained by the fact that Civic and Cosmos Broadcasting Corporation are wholly owned subsidiaries of The Liberty Corporation and not separately owned companies. In any event, it is well established that the Commission will not consider (even well supported) allegations of misconduct in the context of an allotment proceeding.<sup>8</sup>

In its Comments, IBN lists eleven "facts" which, as best as Civic can ascertain, collectively are intended to cast doubt on the proper ownership of KLTV-DT.<sup>9</sup> None are relevant to this allotment proceeding. Despite IBN's disjointed presentation, its ultimate conclusion that KLTV is "actually owned and operated by The Liberty Corporation" is correct –

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<sup>7</sup> IBN Comments at 2.

<sup>8</sup> See *Monterey, Tennessee and Monticello, Kentucky*, 7 FCC Rcd 1606, ¶6 (1992) ("[I]ssues concerning licensee or permittee misconduct occurring outside the context of the allotment proceeding are irrelevant to the determination concerning the action to be taken in such a proceeding, and are more appropriately raised outside of the rule making process."); *Chateaugay, New York*, 9 FCC Rcd 3957, n.1 (1994) ("[I]ssues [of ownership] are not properly raised in an allotment proceeding and will not be addressed...."). See also, *Tylertown, Mississippi*, 14 FCC Rcd 4057, ¶8 (1999); *Carrizo Springs, Corpus Christi, George West, Pearsall, and Three Rivers, Texas*, 13 FCC Rcd 760, n.7 (1998); *Caldwell, College Station, and Gause, Texas*, 10 FCC Rcd 7285, ¶10 (1995).

<sup>9</sup> IBN Comments at 2-3.

a fact plainly borne out by Civic's FCC ownership report, which discloses that Civic is a wholly owned indirect subsidiary of The Liberty Corporation. Whatever point IBN is attempting to make about Civic's ownership (and Civic concedes that it is at a loss to understand what it is), the Commission and the public can rely on Civic's FCC ownership report to ascertain the current ownership structure.<sup>10</sup>

If IBN had reviewed KLTV(TV)'s ownership reports, it would have identified the correct and proper address to send the speculations it attached as Exhibit A to its comments.<sup>11</sup> IBN's "reviews" of Mississippi and Texas business databases to identify Civic's state of incorporation are irrelevant. Civic is a license holding company incorporated in the state of Delaware. At Civic's request, the State of Delaware issued a certificate of good standing to the company, dated November 20, 2001,<sup>12</sup> contradicting IBN's irrational assertion that Civic "no longer exists."<sup>13</sup> Contrary to IBN's incredible claim that it has been "unable to reach the president of Civic,"<sup>14</sup> IBN President Paul Broyles has exchanged correspondence with Civic President James M. Keelor. Mr. Keelor also is the President of Cosmos Broadcasting Corporation, a parent corporation of Civic.

IBN, in its presented "facts," also raises allegations of an improper transfer of control of KLTV(TV). The transfer of control, however, was conducted in full compliance with the Commission's rules. The Commission granted authority for the station's transfer of control on

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<sup>10</sup> Civic License Holding Company, Inc., the licensee of KLTV(TV) is a wholly-owned subsidiary of TV-3, Inc., which is a wholly-owned subsidiary of Civic Communications Corporation II, which is a wholly-owned subsidiary of Cosmos Broadcasting Corporation, which is a wholly-owned subsidiary of The Liberty Corporation.

<sup>11</sup> IBN Comments, Exhibit A.

<sup>12</sup> Copy *attached* in Exhibit A, hereto.

<sup>13</sup> IBN Comments at 2.

<sup>14</sup> *Id.*

September 25, 2000.<sup>15</sup> The transfer of control was effectuated thereafter; and, on March 26, 2001, Civic submitted to the Commission its post-consummation ownership reports detailing the station's new ownership structure. On June 1, 2001, Civic properly and timely submitted to the Commission its 2001 biennial ownership reports.<sup>16</sup>

IBN's final ownership allegation, as Civic best can determine, is that Frank E. Melton, signatory of the KLTU-DT construction permit application, did "nothing" but sign the application.<sup>17</sup> Mr. Melton, who was then an officer of Civic and now serves on the Board of Directors of The Liberty Corporation, certified to the best of his knowledge that the KLTU-DT construction permit application contained true, complete, and correct statements.<sup>18</sup> Of course, it is not unusual that an application which is composed almost entirely of engineering data, such as the KLTU-DT construction permit application, actually is prepared by an FCC consulting engineer instead of an officer of the corporation. Indeed, the Commission explicitly provides for it. The KLTU-DT construction permit application includes a properly executed, Commission-formulated "Preparer's Certification." IBN's unreferenced and unspecified allegation that Mr. Melton somehow acted improperly by signing the KLTU-DT construction permit application has no factual basis but is consistent IBN's overall efforts to erode Civic's goodwill in the community.

IBN inappropriately raises a number of irresponsible and mostly nonsensical ownership allegations, and offers no reasonable support for its speculations. Ownership questions are

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<sup>15</sup> See FCC File No. BTCCT-20000801ACV.

<sup>16</sup> On November 11, 2001, Civic submitted an application regarding a *pro forma* change in ownership structure. See FCC File No. BALCT-20011116AAT.

<sup>17</sup> IBN Comments at 2.

<sup>18</sup> See FCC File No. BMPCDT-20000501ADS.

irrelevant to an allotment proceeding. In any event, a simple review of Civic's publicly available FCC ownership reports fully answers the questions raised by IBN.

### **CONCLUSION**

KLTV-DT's proposed channel substitution complies with the Commission's rules and will result in tremendous benefits to the Tyler community. IBN cannot refute this and its comments provide no reasonable basis for opposition. Instead of relocating displaced station KLGW-LP to Channel 36 and preserving the secondary station's programming services, IBN apparently would rather raise baseless allegations and threaten Civic's goodwill in the community. IBN may believe that refusing to relocate KLGW-LP to Channel 36 will succeed in thwarting the KLTV-DT channel change, but such a belief is not consistent with the Commission's clearly expressed rules of priority.

THEREFORE, for the reasons previously set forth in its Petition for Rule Making and Comments, and as provided herein, Civic respectfully requests that the Commission promptly adopt the changes proposed and amend Section 73.622(b) of its Rules to substitute Channel 10 for Channel 38 for use by KLTV-DT. Such action will serve the public interest by hastening the implementation of digital television, achieving an efficient use of the broadcast spectrum,

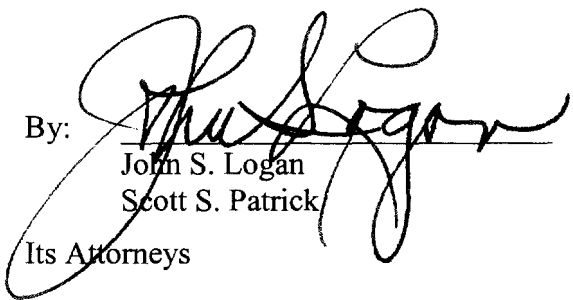


improving the station's signal coverage, and, so long as KLGW-LP relocates to the specified replacement channel, preserving programming services.

Respectfully submitted,

**CIVIC LICENSE HOLDING CO., INC.**

By:

  
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Its Attorneys

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Dated: November 28, 2001

**EXHIBIT A**

**State of Delaware Certification of Good Standing**  
**(*dated* November 20, 2001)**

*State of Delaware*  
*Office of the Secretary of State*      PAGE 1

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I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "CIVIC LICENSE HOLDING COMPANY, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTIETH DAY OF NOVEMBER, A.D. 2001.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 1457023

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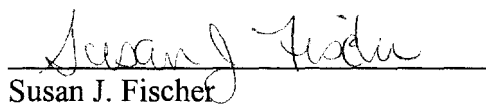
DATE: 11-20-01

### **CERTIFICATE OF SERVICE**

I, Susan J. Fischer, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 28th day of November 2001, the foregoing "REPLY COMMENTS OF CIVIC LICENSE HOLDING COMPANY, INC." were served via first class mail to the following:

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President  
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Susan J. Fischer